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Welcome to the jungle: organized labor in decline

Justice on the Job: Perspectives on the Erosion of Collective Bargaining in the United States. Edited by Richard N. Block, Sheldon Friedman, Michelle Kaminski, and Andy Levin, Kalamazoo, MI, W. E. Upjohn Institute for Employment Research, 2006, 355 pp., \$54.00/cloth; \$22.00/paperback.

Upton Sinclair's 1906 novel *The Jungle* offered a groundbreaking exposition of then-existing harsh and abusive labor conditions routinely imposed on low-skilled workers. The protagonist of the story seeks to provide for his family by accepting work at an unsafe, unsanitary Chicago meatpacking plant. At the plant, employees routinely suffer grievous injuries while earning little more than a pittance. The workers are in a take-it-or-leave-it position, with no feasible means of improving pay or working conditions. Sinclair's work, though fictitious, provided a fairly accurate account of the conditions under which the characters' real-life counterparts worked. At that time, the choice for the average low-skilled worker in America was clear: accept work under brutal conditions for little pay or don't work at all.

Nearly three decades later, Congress passed the National Labor Relations Act of 1935 (NLRA), guaranteeing workers the opportunity to do something most had never been able to do before—join a union. Under this legislation, workers could bargain together, take collective action, and even strike when necessary to achieve better working conditions. The new law represented a sea change for the average worker, who could for the first time exercise power effectively as part of a collective unit rather than remain helpless alone.

In the 79 years since the passage of the NLRA, a variety of social and policy issues have converged to dilute both workers' opportunities to join unions and the power wielded by existing unions in the United States. *Justice on the Job* examines these issues, scrutinizes flaws in the current state of the U.S. labor movement, and ultimately argues that robust organized labor is good for society.

Justice on the Job is a collection of 13 papers that were originally presented at a 2002 conference on workers' rights cosponsored by Michigan State University and the AFL–CIO. The collection has five parts, which the editors readily admit are designed to support a singular point of view: “legal protection for workers' rights in the United States is low, and this situation is adversely affecting the well-being of society as a whole.”

Part 1 is composed of three sections that seek to answer the following question: Are U.S. workers truly free to form unions and bargain collectively? Here, it is acknowledged that U.S. policy affecting workers' ability to form and join unions reflects a natural tension between employees' human rights of free speech and association, on the one hand, and the employers' property rights, on the other. Citing the United Nations Universal Declaration on Human Rights, the authors argue that, because the right to form and join trade unions is internationally recognized as a fundamental right, public policy should place workers' human right to bargain collectively before employers' property rights.

After establishing workers' collective bargaining rights as fundamental, the authors proceed to draw unflattering comparisons between U.S. labor standards and international norms. The brunt of their criticism is directed at National Labor Relations Board (NLRB) election procedures, the primary means by which private sector workers choose union representation. While acknowledging that NLRB procedures are not inherently unfair, the authors conclude that employers have gained a level of control over the process that is unduly coercive in the private sector. Public sector unions are not spared from this criticism either: the authors provide a state-level analysis showing that half of the 50 states have no

collective bargaining rights for public employees and that, of those which do allow collective action, many place significant restrictions on the unions' bargaining power.

Part 2 examines why the freedom to form unions is important to society. This section begins with a first-of-its-kind analysis of content drawn from the first contracts of 175 public and private sector labor unions from 1987 through 1996. The vast majority of these contracts offer employment protections beyond mere employment at will, including antidiscrimination clauses and grievance procedures to protect employees from arbitrary termination. Such extended protections are deemed significant victories for workers.

The authors offer a critical assessment of the service industry, suggesting that there exists a relationship between the growth of low-wage service sector employment and the decline of union membership. Focusing on hotel workers, the authors find that, where unionization is present, workers benefit across a variety of metrics, including wages, work intensity, scheduling, and career advancement. The authors conclude that the best path for the continued survival of the labor movement may be through the service industry, where industry growth exists alongside the need for enhanced worker protections.

Part 3 seeks to provide a perspective on the legal hurdles that affect workers' rights. Here, the authors critically assess two Supreme Court decisions that have created ambiguity in the proper characterization of some employees. Both cases examined involve the supervisory status of certain types of nurses. Because supervisors are exempt from NLRA protections, any open question regarding supervisory status spurs additional litigation, further delaying workers' legitimate attempts to organize.

Despite the unwelcome rulings in both cases, the authors note that workers have found ways to leap this judicial hurdle, both in and out of the courtroom. The authors found that, in courts, administrative law judges often take the view that the nurses targeted do not exercise the independent judgment necessary to fall within the supervisor exemption. In other cases, the nurses either voluntarily step down from supervisory to staff positions or enlist the aid of local communities to gain the compliance of employers.

Part 4 offers an international perspective on American labor unions. The authors discuss American resistance to the International Labour Organization (ILO), a tripartite agency affiliated with the United Nations and tasked with monitoring workers' rights. The U.S. Council on International Business, the U.S. representative to the ILO, is characterized as actively subverting ILO objectives in favor of a union-free philosophy. U.S. opposition to the ILO is explicitly demonstrated by the fact that, for reasons that confound the authors, the U.S. has ratified a mere 14 of the 184 conventions adopted by the ILO and a mere 2 of 8 of its core conventions.

Having spent the bulk of the first four parts of the book critical of the state of workers' rights in the United States, Part 5 offers new strategies for advancing workers' rights into the future.

The first strategy suggested is members-only, minority-union bargaining. Currently, under the NLRA, only majority-rule, exclusive representation is allowed. That is, workers may be represented only by a single union that has the support of a majority of the workers. Members-only, minority-union bargaining would permit a minority of like-minded workers to form their own union. Accordingly, multiple unions would be allowed to coexist in a single workplace.

The authors find fault with the majority-rule, exclusive representation requirement of the NLRA because the union formation process becomes a single, drawn-out campaign that can easily be thwarted by the employer. In addition, they reject the premise that a single union can effectively represent the disparate interests of a group of employees. The authors argue that minority unions eliminate both barriers to entry and aggressive antiunion campaigns while better representing the interests of union members.

The second policy the authors advocate is the recognition of staffing agencies as an extension of the employer. Such recognition would allow temporary workers to avail themselves of labor union membership. Further, those workers would be able to bargain directly with the company for which they work, rather than the staffing agency that hires them.

Finally, the authors advocate that American workers leverage the large percentage of their employers' corporate equity held in employee pension funds. The anticipated impact of this tactic is the obligation for corporate fiduciaries to put workers' interests on par with that of other stakeholders, creating an environment in which workers' interests are included in corporate decisionmaking.

Justice on the Job offers a compelling, albeit one-sided, view of the impact of the decline of U.S. labor unions. I would have welcomed a macrolevel discussion of labor union influence as a counterweight to corporate interests in the political process, and the resultant implications of the decline of labor in the political realm. Also, with respect to the strategies for advancing workers' rights, I would have liked a discussion of barriers to the implementation of such strategies. For instance, what impact might recognizing staffing agencies as an extension of the employer have on an industry largely in demand for its ability to supply nonemployee contract workers?

Alas, such questions are left unexamined, as this analysis would do little to further the overarching theme of the work. As it is, *Justice on the Job* provides insight into a broad range of labor-related issues. It is a must read for anyone seeking to gain an indepth understanding of the pro-labor side of the union debate. I recommend the book strongly.

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